

P30829.A01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Anja BAUER et al.

Confirmation No. 3148

Group Art Unit: 1609

Serial No. :10/812,469

Examiner: Jean-Louis, Samira

Filed : March 29, 2004

For : COSMETIC OR DERMATOLOGICAL STICK

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Amendment
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This is in response to the requirement for restriction under 35 U.S.C. § 121 mailed from the U.S. Patent and Trademark Office on July 30, 2007. Inasmuch as the one-month shortened statutory period for reply is set in the Office Action to expire on August 30, 2007, this response is being filed by the initial due date for response. However, if any extension of time is necessary, this is an express request for any necessary extension of time and authorization to charge any required extension of time fee or any other fees which may be required to preserve the pendency of the present application to Deposit Account No. 19-0089.

RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. 121 to one of the following inventions:

- I Claims 1-15 , drawn to a water-in-oil emulsion composition, classified in class 424, subclass 401.
- II Claims 16-17, drawn to a method for moisturizing the skin comprising applying to the skin said solid water-in-oil emulsion composition, classified in class 424, subclass 401.

Furthermore, the Examiner requests that an Election of Species directed to the following patentably distinct species be made:

- (1) Skin-moisturizing agents recited in claim 1.
- (2) Water-in-oil emulsifiers recited in claim 1.
- (3) Active agents recited in claims 8-10.

ELECTION

In order to be responsive to the requirement for restriction, Applicants elect, with traverse, the invention set forth in **claims 1-15** (the invention of **Group I** as identified in the Restriction Requirement) and **glycerin** as species of the skin-moisturizing agents recited in claim 1 and **polyglyceryl-3-diisostearate** as species of the water-in-oil emulsifiers recited in claim 1. Moreover, **ubiquinone** is elected as the species of the anti-wrinkle substance recited in claim 8, i.e., the only

active agent among those recited in claims 8-10 which is to be present. Currently at least claims 1-5, 7, 8 and 11-17 read on the elected species.

TRAVERSE

Applicants respectfully submit that a restriction requirement is inappropriate in this case. Even if one were to assume, *arguendo*, that the inventions of Groups I to II are distinct, the requirement for restriction should be withdrawn because there is no serious burden.

In MPEP Chapter 800, the Office sets forth its policy by which examiners are guided in requiring restriction under 35 U.S.C. § 121. Section 803 states that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

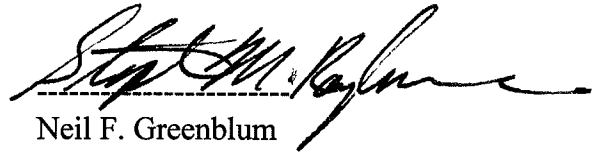
Applicants note that the inventions of Groups I to II identified in the Restriction Requirement relate to a water-in-oil emulsion composition and to a method for moisturizing the skin which comprises the application of the water-in-oil emulsion composition to skin. Accordingly, as a practical matter, the searches for inventions I and II should significantly overlap. For example, a search for the invention of Group I should cover many of the areas that are also relevant for the invention of Group II. Thus, the search burden would not be serious. Incidentally, the inventions of Groups I and II are classified in the same class, i.e., class 424, subclass 401, which is a another indication that the search and examination burden would not be serious.

For the above reasons alone, the Restriction Requirement and the Election of Species Requirement should be withdrawn, which action is respectfully requested.

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Should there be any questions, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Anja BAUER et al.

A handwritten signature in black ink, appearing to read "Neil F. Greenblum", written over a horizontal dashed line.

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August 6, 2007
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